Bina Puri Sdn Bhd v Jambulingam Sethuraman-Raki (c/o Rimbun Corporate Advisory Sdn Bhd)

HIGH COURT (KUALA LUMPUR) — SUIT NO D7–28–895 OF 2003
HAMID SULTAN J
29 DECEMBER 2011

Companies and Corporations — Liquidator — Removal of — Previous application for removal — Whether principle of res judicata would apply to defeat application — Whether there was due cause for removal — Whether liquidator had kept up with professional standard expected of him — Whether liquidator lacked funds to act expeditiously

After Safuan Plaza Sdn Bhd ('the company') was wound up by the applicant, the respondent was appointed as a liquidator of the company in place of the official receiver. The creditors claimed that from the date of his appointment as liquidator, the respondent had failed to call a creditors' meeting. Thus, the Safuan Group Bhd ('SGB') filed an application to have the respondent removed as the liquidator ('the first application'). The judge hearing the application refused to make an order for the removal of the respondent as liquidator. Instead the judge had directed the respondent to call for a creditors' meeting, which the latter did. However, it was the applicant's contention that although the respondent had called for a creditors' meeting as directed by the court, he had failed to take reasonable steps to bring the liquidation process to an early conclusion. The applicant thus filed the present notice of motion for the removal of the respondent as liquidator. The applicant submitted, inter alia, that the creditors had been waiting since 2004 to recover their debt but that since his appointment as liquidator the respondent had failed and/or refused to take any proactive steps to recover the creditors' debt. Instead the respondent had taken the position that there were no funds to act expeditiously. The respondent submitted that the principle of res judicata would apply to the present application.

Held, allowing the application with no order as to costs:

(1) The res judicata issue raised by the respondent had no merits. Based on the decision of the majority creditors after the creditors' meeting, there had been a change of circumstances. The judgment of the court in the first application by SGB only focused on the issue of the respondent's failure to call a creditors' meeting (see para 8(a)).

(2) It is trite that the liquidator could also be removed by the court on cause

shown on the application of a creditor. In this respect the majority view of the creditors could not be brushed aside (see para 8(c)).

(3) In the instant case the liquidator had voluntarily accepted to take conduct of the liquidation process for remuneration and in consequence he was expected to act professionally for just, expeditious and economical disposal of the liquidation process. He could not accept the office and then complain that there were no funds to proceed expeditiously. He ought to have submitted to the court for direction if funds were lacking. As such, it was found that the respondent had not kept up to the professional standard expected of him. As such the applicant's complaint for the respondent's removal had merits (see para 10).

(4) In the circumstances the official receiver was appointed as liquidator to take conduct of the liquidation process and the respondent was directed to hand over all relevant files, documents, monies etc in respect of the liquidation to the official receiver (see para 12(b)).

[Bahasa Malaysia summary

Selepas Safuan Plaza Sdn Bhd ('syarikat') digulung oleh pemohon, responden dilantik sebagai likuidator syarikat menggantikan pegawai penerima. Pemiutang-pemiutang mendakwa bahawa dari tarikh pelantikannya sebagai likuidator, responden telah gagal untuk mengadakan mesyuarat pemiutang-pemiutang. Oleh itu, Safuan Group Bhd ('SGB') memfailkan permohonan untuk menyingkirkan responden sebagai likuidator ('permohonan pertama'). Hakim yang mendengar permohonan menolak daripada membuat perintah penyingkiran responden sebagai likuidator. Sebaliknya hakim tersebut mengarahkan responden mengadakan mesyuarat pemiutang-pemiutang, yang mana kemudiannya dibuat oleh responden. Walau bagaimanapun, adalah menjadi hujahan pemohon bahawa walaupun responden telah mengadakan mesyuarat pemiutang-pemiutang seperti yang diarahkan oleh mahkamah, dia gagal untuk mengambil langkah-langkah munasabah untuk membawa proses likuidasi kepada pemutusan yang awal. Pemohon dengan itu memfailkan notis usul ini bagi penyingkiran responden sebagai likuidator. Pemohon menghujahkan, antara lain, bahawa pemiutang-pemiutang telah menunggu sejak 2004 untuk mendapatkan kembali hutang mereka tetapi sejak pelantikannya sebagai likuidator, responden gagal dan/atau menolak untuk mengambil apa-apa langkah proaktif bagi mendapatkan kembali jumlah hutang-hutang pemiutang-pemiutang. Sebaliknya responden mengambil keputusan bahawa tidak terdapat wang untuk bertindak secara cepat dan cekap. Responden menghujahkan bahawa prinsip res judicata adalah teraplikasi dalam permohonan ini.

Diputuskan, membenarkan permohonan tanpa perintah kepada kos:

(1) Isu res judicata yang dibangkitkan oleh responden tidak bermerit.

Berdasarkan keputusan majoriti pemiutang-pemiutang selepas mesyuarat pemitang-pemiutang, terdapat perubahan hal keadaan. Penghakiman mahkamah dalam permohonan pertama oleh SGB hanya memfokuskan kepada isu kegagalan responden untuk mengadakan mesyuarat pemiutang-pemiutang (lihat perenggan 8(a)).

(2) Adalah nyata bahawa likuidator juga boleh disingkirkan oleh mahkamah atas kausa yang ditunjukkan dalam permohonan pemiutang. Dalam keadaan ini pandangan majoriti pemiutang-pemiutang tidak boleh ditolak ke tepi (lihat perenggan 8(c)).

(3) Dalam kes ini likuidator telah secara sukarela menerima untuk menjalankan proses likuidasi bagi ganjaran dan oleh itu dia dijangka untuk bertindak secara profesional demi keadilan, kecepatan dan kecekapan dan untuk menjimatkan pelepasan proses likuidasi. Dia tidak boleh menerima jawatan dan kemudiannya mengadu bahawa tidak terdapat wang untuk meneruskan secara cepat dan cekap. Dia sepatutnya memohon kepada mahkamah untuk arahan jika tidak mempunyai wang. Oleh itu, didapati bahawa responden tidak menuruti 'standard profesional' yang dijangka daripadanya. Oleh itu, aduan pemohon bagi penyingkiran responden adalah bermerit (lihat perenggan 10).

(4) Dalam keadaan ini pegawai penerima dilantik sebagai likuidator untuk menjalankan proses likuidasi dan responden diarahkan untuk menyerahkan kesemua fail-fail yang relevan, dokumen-dokumen, wang dan lain-lain berkaitan likuidasi kepada pegawai penerima (lihat perenggan 12(b)).]

Notes

For a case on removal of, see 3(1) *Mallal's Digest* (4th Ed 2011 Reissue) para 473.

Cases referred to

Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd & Anor [2007] 5 MLJ 685; [2007] 10 CLJ 7, HC (folld)

Ajit Kumar Nag v GM (PJ) Indian Oil Corporation Ltd Haldia & Ors [2005] RD-Standing Committee 491; [2005] LLR 1137, SC (folld)

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189; [1995] 3 CLJ 783, SC (folld)

Chee Pok Choy & Ors v Scotch Leasing Sdn Bhd [2001] 1 MLJ 346; [2001] 2 CLJ 321, CA (folld)

Chua Boon Chin v JM McCormack & Ors [1979] 2 MLJ 156 (refd)

Dato' Seri Anwar Ibrahim v PP [2010] 1 MLJ 579; [2010] 8 CLJ 934, HC (folld)

Hartecon JV Sdn bhd & Anor v Hartela Contractors Ltd [1999] 2 MLJ 481; [1997] 2 CLJ 104, CA (folld)

Hew Kiang Hoe & May De Selva John De Silva v Shencourt Properties Sdn Bhd (in liquidation) [2011] 7 CLJ 158, HC (refd)
Kong Long Huat Chemicals Sdn Bhd v Raylee Industries Sdn Bhd [1998] 6 MLJ 330 (folld)
Ng Yok Gee & Anor v CTI Leather Sdn Bhd; (Metro Brilliant Sdn Bhd & Ors Interveners) [2006] 7 MLJ 28; [2006] 3 CLJ 360, HC (folld)
Oriental Finance Bhd v Syarikat Geri Paroi Sdn Bhd [2003] 7 CLJ 414, HC (folld)
Phileo Promenade Sdn Bhd & Anor v Premier Model (M) Sdn Bhd [2003] 2 MLJ 159; [2003] 1 CLJ 854, CA (folld)
Procam (Pte) Ltd v Charles Jocelyn Tichborne Nangle & Anor [1990] 3 MLJ 269, HC (folld)
Ricky Thong Yew Fook v OCBC Bank (M) Bhd & Ors [2003] 5 MLJ 481; [2007] 10 CLJ 720, HC (folld)
Safuan Group Bhd v Jambulingam Sethuraman Raki c/o of Rimbun Corporate Advisory Sdn Bhd [2010] MLJU 1860; [2010] 1 LNS 1703, HC (folld)
SBF Builders Sdn Bhd v Bennes Engineering Sdn Bhd [2009] MLJU 953; [2009] 1 LNS 1003, HC (folld)
Torita Rubber Works Sdn Bhd v Chew Choy Eu [2009] 5 MLJ 208; [2009] 9 CLJ 280, HC (folld)
TR Hamzah & Yeang Sdn Bhd v City Centre Sdn Bhd [2012] 1 MLJ 383, HC (refd)
Volvo Malaysia Sdn Bhd v EFK Composite Technology [2003] 5 CLJ 476, HC (folld)

Richard Wee (Richard Wee & Yip) for the applicant.
Joshua Sambanthan (Joshua Sambanthan & Associates) supporting the applicant (Safuan Group Bhd).
Eugene Louis (Susielan & Associates) for the respondent.

Hamid Sultan J:

[1] This is my judgment in respect of the notice of motion (encl 63) by Bina Puri Sdn Bhd to remove the liquidator. The prayers, inter alia, read as follows:

(a) The private liquidator, Mr Jambulingam Sethuraman Raki C/o Rimbun Corporate Advisory Sdn Bhd to be replaced by Mr Wong Weng Foo C/o Messrs Wong Weng Foo & Co;

(b) Costs in cause; and

(c) Any orders or reliefs which this Honourable Court deems fit and proper in this motion.

[2] The parties have relied on the following cases: *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783; *Chee*

Pok Choy & Ors v Scotch Leasing Sdn Bhd [2001] 1 MLJ 346; [2001] 2 CLJ 321; *re Builded Ltd Quickson (South and West) Ltd v Katz and another* [2004] All ER(D) 138; *Ng Yok Gee & Anor v CTI Leather Sdn Bhd; (Metro Brilliant Sdn Bhd & Ors Interveners)* [2006] 7 MLJ 28; [2006] 3 CLJ 360; *Ajit Kumar Nag v GM (PJ) Indian Oil Corporation Ltd Haldia & Ors* [2005] RD-Standing Committee 491; [2005] LLR 1137; *Dato' Seri Anwar Ibrahim v Public Prosecutor* [2010] 8 CLJ 934; *TR Hamzah & Yeang Sdn Bhd v City Centre Sdn Bhd* [2012] 1 MLJ 383; (Commercial Division Suit No D6–28–9 of 2000); *SBF Builders Sdn Bhd v Bennes Engineering Sdn Bhd* [2009] MLJU 953; [2009] 1 LNS 1003; *Procam (Pte) Ltd v Charles Jocelyn Tichborne Nangle & Anor* [1990] 3 MLJ 269; *Safuan Group Bhd v Jambulingam Sethuraman Raki c/o of Rimbun Corporate Advisory Sdn Bhd* [2010] MLJU 1860; [2010] 1 LNS 1703; *Hew Kiang Hoe & May De Selva John De Silva v Shencourt Properties Sdn Bhd (in liquidation)* [2011] 7 CLJ 158; *Abric Project Management Sdn Bhd v Palmshine Plaza Sdn Bhd & Anor* [2007] 5 MLJ 685; [2007] 10 CLJ 7; *Volvo Malaysia Sdn Bhd v EFK Composite Technology* [2003] 5 CLJ 476; *Ricky Thong Yew Fook v OCBC Bank (M) Bhd & Ors* [2003] 5 MLJ 481; [2007] 10 CLJ 720; *Hartecon JV Sdn bhd & Anor v Hartela Contractors Ltd* [1999] 2 MLJ 481; [1997] 2 CLJ 104; *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189; [1995] 3 CLJ 783; *Oriental Finance Bhd v Syarikat Geri Paroi Sdn Bhd* [2003] 7 CLJ 414; *Wong Sin fan & Ors v Ng Peak Yam @ Ng Peak Yeow & Anor* (Civil Appeal No Witness-02-(IM)-2880 of 2010); *Chua Boon Chin v JM McCormack & Ors* [1979] 2 MLJ 156; *Kong Long Huat Chemicals Sdn Bhd v Raylee Industries Sdn Bhd* [1998] 6 MLJ 330; *Torita Rubber Works Sdn Bhd v Chew Choy Eu* [2009] 5 MLJ 208; [2009] 9 CLJ 280; *Phileo Promenade Sdn Bhd & Anor v Premier Model (M) Sdn Bhd* [2003] 2 MLJ 159; [2003] 1 CLJ 854.

BRIEF FACTS

[3] Safuan Plaza Sdn Bhd was wound up by the applicant sometime in 2004. Official receiver was appointed as receiver and subsequently Mr Jambulingam Sethuraman Raki was appointed to replace the official receiver. Sometime in the year 2010 Safuan Group Bhd has applied to remove the liquidator but it was not successful and the court gave some directions. The decision is reported as *Safuan Group Bhd*. The matter is on appeal. The primary complaint in the previous application by Safuan Group Bhd which was supported by the present applicant was that the liquidator has failed to call a creditors' meeting from the date of his appointment. The court only dealt with that issue and found that the liquidator ought to call for the meeting and so directed.

[4] Subsequent to the order of court the liquidator did call the meeting and was not able to satisfy the creditors that he has taken all just, reasonable and expeditious steps for the just, expeditious and economical disposal of the

liquidation process. In fact it was the liquidator's position that there were no funds to act expeditiously and there were many complaints in the manner the creditors were treated in the said meeting. The creditors in the said meeting unanimously voted for the no confidence motion in the liquidator. There is also letter of support of other creditors including Tenaga.

[5] The principle complaint by the applicant is that the liquidator has failed to take reasonable steps to bring the liquidation process to an early conclusion. The complaints by the parties have been summarised by the learned counsel for Safuan Group Bhd as follows:

(a) the creditors has lost confidence towards the liquidator's ability to recover the outstanding debt due and owing to all the creditors;

(b) the liquidator on each occassion has informed the creditors that there is no funds in the account in order to settle the debt. Hence the creditors are fed up with the same old excuses given by the liquidator in recovering the debt of the creditors. Instead of finding alternative and more pro active solutions to increase the cash flow in Safuan Plaza account, the liquidators constant execuse that there is no money in the account is intolerable and unacceptable;

(c) the creditors has now found the liquidator being irrelevant, failed in his duties to recover those outstanding debt and wholly incompetent;

(d) the reason for the removal of the liquidator are as follows:

(i) the liquidator was appointed on 27 July 2007. Since the liquidator's appointment, the liquidator has failed to hold a creditors meeting to discuss with the creditors on the ways and method of recovering all the creditors debt. This eventually led Safuan Group Bhd to file an application to remove the said liquidator;

(ii) it was only then the liquidator realised and decided to hold the first creditor's meeting with the creditors. Even then, it was upon Yang Arif Dato Mary Lim direction, first creditors meeting was held. If no action is taken till todate, the liquidator will remain silent and no creditors meeting will be held;

(iii) for the period of four years since the appointment the liquidator has failed, erred and/or refused to take any proactive steps to recover the creditors debt;

(iv) there was no form of timing schedule or implementation plan was proposed to the creditors on the way in which the liquidator would recover the creditors debts;

(v) instead of coming up with a more effective implementation plan

on how to recover the creditors debt, the liquidator was pursuing a futile exercise in determining if the hotel tower block at Regency International Hotel and basement car park were wrongfully assigned to third parties;

(vi) in fact during one of the creditors meeting, the liquidator was placed on a challenge to show proof that he has a valid document of title to confirm that Safuan Plaza Sdn Bhd is the beneficial owner of the hotel block and towards the car park which the liquidator has failed to produce any document to the contrary to convince the creditors. This clearly evident from the minutes of creditors meeting held on 19 May 2011 exh BP2 of We Her Ching affidavit in support;

(vii) from the liquidator's response during the creditors meeting held on 19 May 2007, it is abundantly clear that the liquidator was attempting to hood wink all the creditors by pacifying the creditors that they have a chance of recovering their debts if the liquidator manage to vest the hotel block and carpark back to Safuan Plaza Sdn Bhd;

(viii) without showing any new development in recovering the creditors debt nor proof of evidence that the hotel block and carpark belongs to Safuan Plaza Sdn Bhd it is our submission that the said liquidator is merely wasting all the creditors time and effort when it is absolutely and abundantly clear that the liquidator does not have any valid documents of title to establish the ownership on the hotel block and car park. The liquidator's conduct is akin to 'flogging a dead horse' which in the end produces no result;

(ix) instead of the creditors clinging unto the liquidator's false hope, it is in the best interest of the creditors that the liquidator be removed and replaced by more efficient and productive liquidator;

(x) the creditors has waited since 2004 to recover their debt. Sadly to say that till todate nothing much improved since the liquidator's appoinment;

(xi) apart from the above, we also noticed from the letters and document produced by the liquidator that the liquidator does not personally sign any letters sent to third parties. Exhibit JSR1 will show mat most of the letters were signed by one Kumar Nathan and Raveendra Kumar Nathan as the liquidator's representative; and

(xii) since the appointment of the said liquidator is personal in nature, any form of appointing a representative to act on behalf of the liquidator must be evidence in writing. No where in the

liquidator's affidavit in reply, did the liquidator shows that both Kumar Nathan and Raveendra Kumar Nathan was the liquidator's agent or representative. A

(e) since the appointment of the respondent as a liquidator, the respondent has failed, refused and erred in protecting or taking proactive steps in recovering the debts due and owing to the creditors; B

(f) the respondent has failed to take all reasonable steps to do his due diligence in respect to the company assets by reviewing the floating assets and charges and liquidating all other assets owned by Safuan Plaza in order to settle the debt of the creditors; C

(g) the respondent till todate has failed to show what steps have the respondent taken in realising all those assets albeit fixed or floating owned by the Safuan Plaza towards mitigating those losses due to the creditors;

(h) in fact no independent accounting or auditing was carried out or shown towards the satisfaction of the creditors that the respondent has taken all reasonable measures to recover those losses suffered by the creditors towards the satisfaction of the creditors; D

(i) the respondent's indolent conduct and his failure to discharge it duties in the best interest of the creditors clearly has made the applicant and the other creditors to loose confidence over the respondent as the private liquidator; E

(j) further the respondent upon his appointment on 27 July 2007 took one year and two month (14 months) to retrieve all those documents for the process of liquidation, (inclusive the creditor's proof of debt) which runs contrary to what the respondent has stated of his experience and the management of the company's liquidation in his affidavits; F

(k) in the futile attempt to defend the respondents role as a private liquidator, the respondent shows voluminous documents as exhibits of the works done by the respondent. However the respondent failed to inform or explain to this honourable court that part of the respondents work has already been done by the previous official receiver and liquidator; and G

(l) it is applicant's humble submission that the respondent as a private liquidator is not fit to carry out his duties in the best interest of the creditors and as such, the applicant together with other creditors wishes to remove the respondent and appoint Messrs Wong Weng Foo & Co, as the new liquidator for Safuan Plaza Sdn Bhd. H

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[6] Even though the liquidator could not show satisfactory reason for the delay or what attempts he had taken to seek direction of court to ensure that the creditors' contribution to the liquidation process and/or directions for just, expeditious and economical conclusion of the liquidation process

notwithstanding he has voluntarily accepted the assignment and constantly complaining there are no funds attempts to argue that the principle of res judicata will apply to this application as the learned judge in the previous application has refused an order for the removal of the liquidator.

[7] It must also be noted that the liquidator quite unprofessionally has taken a swipe at the firm of solicitors to cast aspersion on the professional competence of the solicitor. I do not wish to repeat the same as it would stand to embarrass the firm save to say that such disparaging remarks as complained of is expunged from the affidavits.

[8] I have read the notice of motion, affidavits and submission of the parties in detail. After having given much consideration for learned counsel for the liquidator, I take the view that the application for the removal of the liquidator must be allowed and the official receiver must be appointed as the liquidator before any suitable candidate is appointed as private liquidator. My reasons, inter alia, are as follows:

(a) the res judicata issue raised has no merits as there has been a change of circumstances and the majority creditors after the creditors' meeting as directed by the court has passed a resolution of no confidence against the liquidator. The previous judgment of justice Mary Lim only focused on the issue of creditors' meeting and that part of the judgment reads as follows:

> Safuan Plaza Sdn Bhd (Safuan Plaza) was wound-up on 13 February 2004 pursuant to a petition by Bina Puri Sdn Bhd, one of its major creditors. On 27 July 2007, Mr Jambulingam Sethuraman-Raki was appointed by the court to replace the official assignee as Safuan Plaza's liquidator. Apparently, Mr Jambulingam Sethuraman-Raki (liquidator) has not summon a creditors' meeting since his appointment. This was despite requests from Safuan Group Bhd (applicant) and SGB Development Sdn Bhd. And that is the primary complaint behind this application for the removal of Mr. Jambulingam Sethuraman-Raki, his failure to call for a creditors' meeting.

(b) now there is a change of circumstances and it is based on the decision of the majority creditors to remove the liquidator. I have dealt with this area of jurisprudence in detail in the yet unreported case of *TR Hamzah & Yeang Sdn Bhd v City Centre Sdn Bhd* , Case No D6–28–9 of 2000, judgment dated 31 October 2011, Kuala Lumpur High Court which the applicant had relied on heavily, and refers to various paragraphs of the judgment which read as follows:

> (g) if the liquidator for any reason is constrained from continuing with the liquidation process the law does not prohibit him from resigning (see s 232(1) and 239(b) of the CA 1965). However, he cannot base lack of

funds as a reason for not proceeding with the liquidation process expeditiously when he has voluntarily accepted the role;

(h) it is trite … … A high standard of care is required from a liquidator. It will be prudent for a liquidator in every case of serious doubt or difficulty in relation to the performance of his duties, to submit to the court for its guidance as he must not forget he also has a status of an officer of court and the court, as a privilege to his office, does not allow any person to interfere in his work generally without leave of court …

(i) to check any form … … To ensure the paramount interest of the creditors and/or contributories and to demonstrate to court that, at all material time the liquidator is acting professionally, there must be total transparency of the conduct and action of the liquidator. The transparency aspect inter alia may be satisfied if appropriate meeting and information are provided to the creditors and/or contributories and statutory procedure and administrative requirements are diligently complied with; and where there is a dispute to direct the creditors and/or contributories to seek appropriate directions of court or in cases where substantial assets, more importantly, if landed properties are to be sold, to get appropriate sanction of the court with due notice to the relevant parties.

All of the above paragraphs have much relevance to the instant case.

(c) it is trite the liquidator can only be removed on cause shown. In this respect the majority view of the creditors cannot be brushed aside. This part of the jurisprudence has been well articulated by Justice Ramly Ali in the case of *Ng Yok Gee & Anor* where at paras 41 and 44 the learned judge says as follows:

[41] As a matter of law, it is not a sufficient ground for removal of a liquidator that a substantial minority or even the majority of shareholders wants the liquidators to be removed. It is not a popularity contest.

[44] In the present case, the applicant has not shown that all the contributories and creditors support this application.

If the applicant in *Ng Yok Gee* case has shown that all the creditors and/or contributories support the application then the court may have stated otherwise. There are sufficient authorities in such application the majority view of the creditors and/or contributories play a significant role, and the overriding consideration is that the court must be satisfied that it is against the interest of the liquidation. In *Chua Boon Chin* D'Cotta J has this to say:

If the court is satisfied on the evidence before it that it is against the interest of the liquidation (all those interested in the company being liquidated), that a particular person should be made liquidator, then the court has power to remove the present liquidator and then to appoint some other person in his place.

In this respect the observation of the learned authors of *Halsbury's Laws of England*, (4th Ed), at p 671 para 1154 is useful for the purpose of the instant application and that relevant part reads as follows:

> The liquidator may also be removed by the court on cause shown on the application of a creditor or contributory. Thus, he may be removed if the court is satisfied that his removal would be for the general advantage of all who are interested in the company's assets. Though the court may not have a general discretion, its jurisdiction is not confined to cases where there is personal unfitness in the liquidator, but extends to cases where the unfitness is occasioned by his connection with other parties, or by the circumstances of the particular case. In considering whether a liquidator should be removed, importance is attached to such factors as that the majority of the company's creditors will be paid off by a large creditor if his nominee is appointed, or that the majority is dissatisfied with the existing liquidator, especially if some of them are willing to act without remuneration. A contributory in arrear as to his calls cannot apply for a liquidator's removal.

If the assets belong substantially to the shareholders, the court, before removing a liquidator, may direct the wishes of the general body of shareholders to be ascertained at a general meeting. It is doubtful whether the court has power as an alternative to removing a liquidator to appoint an additional liquidator to act with him.

[9] Learned counsel for the applicant places an emphatical plea to the court for the removal as follows:

> We submit that the Liquidator is a quasi-trustee, a fiduciary acting in the best interest of Creditors. It is the Liquidator's duty to resolve the liquidation as quickly as possible, so that their fees will be as low as possible. When exercising their duties, they act like the administrator of the wound-up company but it is our view that the Liquidator must always lend his ear to the Creditors because it is the Creditor's money which is involved in the process.
>
> It must be noted, the only Prefect over the conduct of a private liquidator is the Court. There is no Bar Council of liquidators and no Disciplinary Board overseeing the liquidators like the Disciplinary Board which oversees the conduct of lawyers. As such, the Creditors like the Applicant are at the mercy of the Liquidator but the irony is that the money involved is from the Creditor and not the Liquidator. By right the Liquidator should always take into account the Creditor's view and must always be transparent in whatever they do. This in our view is lacking with the current Respondent.
>
> The Applicant now pleads to this Honourable Court to help the Applicant and other supporting Creditors who wants to resolve this liquidation as quickly as possible and as effective as possible. The Applicant is no more confident with the Respondent and would prefer another liquidator be appointed. The Applicant has recommended Mr. Wong Weng Foo but if Your Lordship should decide to appoint another liquidator or even the Official Receiver, the Applicant would be very much obliged.

[10] In the instant case the liquidator has voluntarily accepted to take conduct of the liquidation process for remuneration and in consequence he is expected to act professionally for just, expeditious and economical disposal of the liquidation process. In the event funds are lacking he ought to have submitted to the court for direction and the court will be in a position to order the creditors and/or contributories to advance payment for just expenses to proceed with the liquidation process. He cannot accept the office and complaint that there are no funds to proceed expeditiously. The proper thing for him to do is to resign as liquidator.

[11] In the instant case I am satisfied that the liquidator has not kept up to the professional standard which is expected for just, expeditious and economical conclusion of the liquidation. It will be in the interest of the liquidation process itself that he be immediately removed with directions before another private liquidator is appointed. In this respect the complaint of the applicant as well as the supporting creditor has merits.

[12] For reasons stated above I allow the applicant's application for removal of the liquidator, Jambulingam Sethuraman-Raki with no order as to costs, with the following directions:

(a) the official receiver is appointed as liquidator to take conduct of the liquidation process from the date of the pronouncement of this order;

(b) Jambulingam Sethuraman-Raki with prior appointment with official receiver to hand over all relevant files, documents, monies etc in respect of the liquidation to the official receiver in person within 20 working days from the date of this order, failing which the relevant parties may be at liberty to initiate contempt proceedings for non-compliance of this part of the order;

(c) the official receiver to notify the solicitors for the applicant, the supporting creditor Safuan Group Bhd, to be present when he is receiving the above from Jambulingam Sethurman-Raki;

(d) the official receiver within three months of the order to compile a report of the status of the liquidation process and the view of the creditors and/or contributories with a view for just, expeditious and economical conclusion of the liquidation process; and

(e) the applicant and Safuan Group Bhd shall pay in advance a sum requested by the official receiver to meet with immediate disbursements if any for the purpose of attending to the liquidation process.

Application allowed with no order as to costs.

Reported by Kohila Nesan